SYARIKAT KHIDMAT SAUJANA TRADING SDN BHD A

v.

BUMI TERBIT SDN BHD

COURT OF APPEAL, PUTRAJAYA B
ABDUL WAHAB PATAIL JCA
MOHTARUDIN BAKI JCA
MOHAMAD ARIF YUSOF JCA
[CIVIL APPEAL NO: J-01-582-09-2011]
3 JANUARY 2013 C

LAND LAW: *License - Controlled premises - Harvesting rights for oil palm awarded by Land Office - Discovery that land came under jurisdiction of Perhutanan Johor and not Land Office - Application for use permit approved - Whether land allocated to another entity and previous use permit cancelled by Perhutanan Johor - Application to quash decision of Perhutanan Johor - Whether ought to be allowed* D

CIVIL PROCEDURE: *Appeal - Memorandum of appeal - Whether memorandum of appeal contained particulars - Whether contained grounds of objection to decision appealed - Whether points of law or fact alleged to have been wrongly decided laid down - Whether appeal proper - Rules of the Court of Appeal 1994, rr. 18 & 21(2)* E

When Bumi Terbit Sdn Bhd ('BTSB') was awarded harvesting rights for oil palm over a piece of land by the Pejabat Tanah F
Kluang, a temporary license was issued. However, it was later discovered that the land came under the jurisdiction of Perhutanan Johor when a notification was issued that BTSB had committed an offence under the National Forestry Act 1984 ('the Act'). BTSB then proceeded to apply for a use permit over the said land G
on 10 October 2006 and the application was approved. The use permit was issued on 30 November 2007 for the period of 1 January 2008 until 31 December 2008 and in early December 2008, BTSB applied for annual renewal of the permit but received no answer. On 10 January 2011, BTSB received letters from H
Perhutanan Johor dated 25 November 2010 and Kluang Forestry Office dated 30 December 2010 that pursuant to a meeting by the Majlis Mesyuarat Kerajaan, an area of 139.65 hectares on the said land had been allocated to Syarikat Khidmat Saujana Trading I

Sdn Bhd ('SKSTSB') and an area of 154.24 hectares to BTSB and that the previous use permit was cancelled. BTSB then applied to the High Court for an order of *certiorari* to quash the decision of Perhutanan Johor and Kerajaan Negeri Johor and the application was allowed. Subsequently, the use permit to BTSB was reinstated and SKSTSB was unable to use the 139.65 hectares allocated to it. In the present appeal, SKSTSB submitted that it had applied to the State Authority for the alienation of the land back in 1998. SKSTSB then planted oil palm trees on about 500 acres of the land. On a follow up to the application for alienation of the said land on 13 April 2006, it was discovered that BTSB was awarded with the rights to harvest palm oil on the said land. Upon inquiry at the Pejabat Hutan Johor Daerah Kluang, SKSTSB found out that BTSB was awarded with the use permit for oil palm harvesting on an area of 966.78 acres inclusive of the 500 acres of land planted with oil palm trees by SKSTSB. *Vide* a letter by Jabatan Perhutanan Negeri Johor, SKSTSB was awarded with harvesting rights for an area of 345.15 acres. In its preliminary objection, BTSB submitted that the appellants failed to comply with rr. 18 and 21(2) of the Rules of the Court of Appeal 1994 ('ROCA') and therefore, the appeals ought to be dismissed with costs.

Held (dismissing appeal with costs)
Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) Rule 18 of the ROCA requires an appellant to prepare and file a memorandum of appeal with particulars. Rule 18 is particular with particulars. It has precise directions. The memorandum of appeal must set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against and specifying the points of law or fact which are alleged to have been wrongly decided; such grounds to be numbered consecutively. (para 30)

(2) Rule 18 of the ROCA expresses the principle that an appeal is not intended as a second bite of the cherry for a party who is not happy with the decision of the court appealed from but an appeal is for the purpose of seeking the intervention of the appellate court to correct an injustice arising from an error of law or principle or a finding or conclusion of fact relied upon by that court. (para 31)

(3) The grounds in this case were general in nature as to be embarrassing. It was nothing more than saying one was not happy with the decision without saying what was the error of the law, principle or finding or conclusion relied upon. It was merely an attempt for a second bite of the cherry. Since there were no grounds to consider, the appeal ought to be dismissed. (paras 34 & 36)

(4) At the time the approval for issue of use permit was issued to BTSB, SKSTSB had only made an application for the land. In its earlier entry, development and operation was solely on the ground that it had made an application in 1998, which was subsequently found missing and re-applied in April 2006. Even so, it was clear that the application had not been approved when the use permit over the area including the area said to have been developed and operated by SKSTSB was issued by Perhutanan Johor, which at the material time, had jurisdiction over the area to BTSB. (para 37)

(5) The area having been placed under the jurisdiction of Perhutanan Johor and its permit to BTSB having been properly issued, the Pejabat Tanah Kluang no longer had jurisdiction to entertain SKSTSB's application. Hence, when SKSTSB was awarded with harvesting rights for an area of 345.15 acres, of which it accepted, it was issued by Perhutanan Johor. Perhutanan Johor was committed to BTSB for the 30 years awarded by the Lembaga Tawaran Membalak Negeri Johor and the annual renewal of the use permit could be withheld when there was any non-compliance with the terms. (paras 39 & 42)

Bahasa Malaysia *Translation Of Headnotes*

Apabila Bumi Terbit Sdn Bhd ('BTSB') diberikan hak untuk memungut hasil minyak kelapa sawit ke atas sebidang tanah oleh Pejabat Tanah Kluang, satu lesen sementara telah dikeluarkan. Walau bagaimanapun, didapati kemudian bahawa tanah tersebut terangkum di bawah bidang kuasa Perhutanan Johor semasa satu pemberitahuan dikeluarkan bahawa BTSB telah melakukan kesalahan di bawah Akta Perhutanan Negara 1984 ('Akta'). BTSB kemudian meneruskan untuk memohon permit penggunaan ke atas tanah tersebut pada 10 Oktober 2006 dan permohonan tersebut dibenarkan. Permit penggunaan tersebut dikeluarkan pada 30 November 2007 bagi tempoh 1 Januari 2008 hingga

31 Disember 2008 dan pada awal Disember 2008, BTSB memohon bagi pembaharuan tahunan permit tersebut tetapi tidak mendapat sebarang jawapan. Pada 10 Januari 2011, BTSB menerima surat-surat daripada Perhutanan Johor bertarikh 25 November 2010 dan Pejabat Perhutanan Kluang bertarikh 30 Disember 2010 bahawa berikutan satu mesyuarat oleh Majlis Mesyuarat Kerajaan, satu kawasan 139.65 hektar tanah tersebut telah diperuntukkan kepada Syarikat Khidmat Saujana Trading Sdn Bhd ('SKSTSB') dan satu kawasan seluas 154.24 hektar kepada BTSB dan bahawa permit penggunaan terdahulu telah dibatalkan. BTSB kemudiannya memohon kepada Mahkamah Tinggi bagi satu perintah *certiorari* untuk membatalkan keputusan Perhutanan Johor dan Kerajaan Negeri Johor dan permohonan tersebut dibenarkan. Seterusnya, permit penggunaan dihidupkan semula dan SKSTSB tidak dapat mengerjakan 139.65 hektar yang diperuntukkan kepadanya. Dalam rayuan ini, SKSTSB menghujahkan bahawa ia telah memohon kepada Pihak Berkuasa Negeri bagi pemberian milik tanah tersebut pada tahun 1998. SKSTSB kemudiannya menanam pokok kelapa sawit atas 500 ekar tanah tersebut. Susulan kepada permohonan pemberian milik ke atas tanah tersebut pada 13 April 2006, didapati bahawa BTSB telah diberikan hak-hak untuk memungut hasil minyak kelapa sawit atas kawasan seluas 966.78 ekar termasuklah 500 ekar tanah yang ditanam dengan pokok kelapa sawit oleh SKSTSB. Melalui surat daripada Jabatan Perhutanan Negeri Johor, SKSTSB diberikan hak-hak memungut hasil bagi kawasan seluas 345.15 ekar. Dalam bantahan awalannya, BTSB menghujahkan bahawa perayu-perayu gagal untuk mematuhi k. 18 dan k. 21(2) Kaedah-Kaedah Mahkamah Rayuan 1994 ('KMR') dan dengan itu, rayuan-rayuan wajar ditolak dengan kos.

Diputuskan (menolak rayuan dengan kos)
Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Kaedah 18 KMR mengkehendaki perayu untuk menyediakan dan memfailkan memorandum rayuan dengan butirannya. Kaedah 18 amat menitikberatkan butiran. Ia mempunyai arahan yang tepat. Memorandum rayuan hendaklah menyatakan dengan ringkas lagi padat dan di bawah senarai berlainan, tanpa hujahan atau naratif, alasan-alasan bantahan terhadap keputusan yang dirayu dan memperihalkan perkara-perkara atau fakta-fakta undang-undang yang didakwa diputuskan secara khilaf; yang mana alasan-alasan tersebut mesti dinomborkan secara berturutan.

(2) Kaedah 18 KMR memperuntukkan prinsip bahawa satu rayuan bukanlah bermaksud peluang kedua bagi pihak yang tidak berpuas hati dengan keputusan mahkamah yang dirayukan tetapi satu rayuan bertujuan untuk memohon campur tangan mahkamah peringkat rayuan bagi memperbetulkan ketidakadilan yang timbul daripada kekhilafan undang-undang atau prinsip atau dapatan atau kesimpulan fakta yang disandarkan oleh mahkamah tersebut.

(3) Alasan-alasan dalam kes ini bersifat umum hinggakan memalukan. Ia tidak lain sekadar mengatakan bahawa seseorang tidak berpuas hati dengan keputusan tanpa menyatakan apakah kekhilafan undang-undang, prinsip atau dapatan atau keputusan yang disandarkan. Ia hanya sekadar percubaan mendapatkan peluang kedua. Oleh kerana tiada alasan untuk dipertimbangkan, rayuan sewajarnya ditolak.

(4) Semasa permohonan bagi pengeluaran permit penggunaan diberikan kepada BTSB, SKSTSB hanya membuat permohonan ke atas tanah. Dalam permohonan awalnya, pembangunan dan operasi adalah semata-mata atas asas bahawa ia telah membuat permohonan pada tahun 1998, yang kemudiannya didapati hilang dan dipohon semula pada April 2006. Walaupun sedemikian, adalah jelas bahawa permohonan tersebut tidak dibenarkan apabila permit penggunaan ke atas kawasan termasuk kawasan yang dikatakan telah dibangunkan dan dioperasikan oleh SKSTSB dikeluarkan oleh Perhutanan Johor, yang mana pada masa material, mempunyai bidang kuasa ke atas BTSB.

(5) Dengan terangkumnya kawasan tersebut di bawah bidang kuasa Perhutanan Johor dan permit kepada BTSB setelah dikeluarkan dengan betul, Pejabat Tanah Kluang tidak lagi mempunyai bidang kuasa melayani permohonan SKSTSB. Oleh itu, apabila SKSTSB diberikan hak memungut hasil bagi kawasan seluas 345.15 ekar, yang mana diterimanya, ia dikeluarkan oleh Perhutanan Johor. Perhutanan Johor terikat dengan BTSB bagi 30 tahun yang diberikan oleh Lembaga Tawaran Membalak Negeri Johor dan pembaharuan tahunan untuk permit penggunaan boleh ditahan apabila berlaku ketidakpatuhan terhadap terma-terma.

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Capital Insurance Bhd v. Kasim Mohd Ali [2000] 1 CLJ 269 CA ***(refd)***

Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2010] 1 CLJ 444 CA ***(refd)***

Duli Yang Amat Mulia Tunku Ibrahim Ismail ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal [2009] 4 CLJ 329 FC ***(refd)***

Ketua Pengarah Kastam v. Ho Kwan Seng [1975] 1 LNS 72 FC ***(refd)***

Non-Metallic Mineral Product Manufacturing Union v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [1996] 3 CLJ 614 HC ***(refd)***

Public Finance Bhd v. Harta Pertama Sdn Bhd & Ors [2002] 4 CLJ 768 CA ***(refd)***

Taylor v. John Summers & Sons Ltd [1957] 1 WLR 1182 ***(refd)***

Legislation referred to:

National Forestry Act 1984, ss. 25, 26, 27, 34, 36(4), 38
Rules of the Court of Appeal 1994, rr. 18, 21(2)
Rules of the High Court 1980, O. 1A

For the appellant - K Wong; M/s Tan Hee Soon, Wong & Partners
For the respondent - K Sila Dass (Shanker Sivapragasam & Azlinda Zainal Abidin with him); M/s K Sila Dass & Partners

[Appeal from High Court, Kuala Lumpur; Civil Suit No: 25-04-2011]

Reported by Najib Tamby

JUDGMENT

Abdul Wahab Patail JCA:

[1] In the High Court, Bumi Terbit Sdn Bhd ('BTSB') as applicant had applied by Originating Motion No. 25-4-2011 for an order of *certiorari* to quash a decision of the Perhutanan Johor and Kerajaan Negeri Johor (the first and second respondents in the High Court). The High Court granted the order of *certiorari* as follows:

> MAKA ADALAH DIPERINTAHKAN bahawa satu perintah *certiorari* dikeluarkan untuk membolehkan Mahkamah yang Mulia ini membatalkan keputusan Responden Pertama dan Kedua untuk membatalkan Permit Penggunaan No. JH PP/1/08 bertarikh 30.11.2007 ke atas tanah yang dikenali sebagai PTD 8589, Mukim Rengam dan PTD 60343, Mukim Kluang yang seluas 391.249 hektar (966.78 ekar) yang telah diperuntukkan kepada pemohon.

Background

[2] The case for BTSB was that sometime in early April 2006, the Kluang Land Office had invited tenders to harvest oil palm (harvesting rights) over the land. BTSB successfully tendered for the harvesting rights. A temporary occupation license was issued for the land for the period 5 May 2006 to 31 December 2006.

[3] On or about 4 May 2006, BTSB discovered that the land came under the jurisdiction of the Perhutanan Johor when a notification was issued by the Perhutanan Johor that BTSB had committed an offence under the National Forestry Act 1984 (the Act).

[4] Seeking to regularise its occupation and acting on the advice of the Perhutanan Johor, BTSB applied on or about 10 October 2006 for a use permit over the said land.

[5] The Perhutanan Johor approved the application, subject to a number of conditions to be complied with before issuance of the use permit. When the approval to issue use permit was issued 26 December 2006, it contained the provision:

> 2. Tempoh permit penggunaan ialah 30 Tahun.

[6] The use permit under s. 36(4) of the National Forestry Act 1984 was issued on 30 November 2007 for the period 1 January 2008 until 31 December 2008. Subsequently, annual applications for renewal were made.

[7] BTSB's application in early December 2008 for annual renewal of the permit received no answer. On or about 10 January 2011, BTSB received letters from the Perhutanan Johor dated 25 November 2010 and the Kluang Forestry Office dated 30 December 2010 that pursuant to a meeting by the Majlis Mesyuarat Kerajaan Johor on 8 September 2010, an area of 139.65 hectares on the said land had been allocated to Syarikat Khidmat Saujana Trading Sdn Bhd ('SKSTSB') and an area of 154.24 hectares to BTSB and that the use permit previously was cancelled.

[8] The order of *certiorari* issued by the High Court meant that the use permit issued to BTSB was reinstated and SKSTSB was unable to use the 139.65 hectares allocated to it.

[9] SKSTSB appealed *vide* Civil Appeal No. J-01-582-09-2011. The Perhutanan Johor and Kerajaan Negeri Johor appealed *vide* Civil Appeal J-01-595-09-2011. They are collectively referred to herein as the appellants.

[10] In addition to their written submissions on the appeal, there was a preliminary objection by BTSB.

The Preliminary Objection

[11] It was submitted that the appellants failed to comply with rr. 18 and 21 sub-r. 2 of the Rules of Court of Appeal 1994 and therefore the appeals ought to be dismissed with costs.

[12] Rule 18 pertains, *inter alia*, to the requirements in respect of memorandum of appeal.

[13] The memorandum of appeal in Civil Appeal No. J-01-582-09-2011 stated that the High Court erred:

> (a) Apabila memerintah satu perintah *certiorari* dikeluarkan untuk membolehkan Mahkamah yang Mulia ini membatalkan keputusan Responden Pertama dan Kedua untuk membatalkan Permit Penggunaan No. JHPP/1/08 bertarikh, 30.11.2007 ke atas tanah yang dikenali PTD 8589, Mukim Rengam dan PTD 60343, Mukim Kluang yang seluas 391.249 hektar (966.78 ekar) yang telah diperuntukkan kepada Pemohon.
>
> (b) Di dalam semua keadaan dengan membenarkan permohonan Responden terhadap Perayu dengan kos.

[14] The memorandum of appeal in Civil Appeal No. J-01-595-09-2011 stated in the grounds of appeal that the High Court erred in ordering:

> (a) Bahawa satu perintah *certiorari* dikeluarkan untuk membolehkan Mahkamah membatalkan keputusan Responden Pertama dan kedua yang membatalkan Permit Penggunaan No JHPP/1/08 bertarikh 30 November 2007 ke atas tanah yang dikenali sebagai PTD 8589 Mk Rengam dan PTD 60343 Mk Kluang yang seluas 391.249 hektar (988.78 ekar) yang telah diperuntukkan kepada Pemohon;
>
> (b) Bahawa kos sebanyak RM3,000.00 dibayar oleh Responden Pertama, Kedua dan Ketiga kepada Pemohon.

[15] Before delivering our decision on the objection, we proceeded also to hear the appeals.

Civil Appeal No. J-01-595-09-2011

[16] We heard submissions by the State Legal Adviser for the Perhutanan Johor and Kerajaan Negeri Johor in Civil Appeal J-01-595-09-2011.

[17] After the mid-day adjournment, the State Legal Adviser informed the court that the appellants therein withdraw their appeals with costs agreed at RM3,000. Civil Appeal J-01-595-09-2011 was accordingly struck out.

Civil Appeal No. J-01-582-09-2011

[18] Counsel for SKSTSB relied upon the written submissions filed.

[19] Briefly the case for the appellant herein, SKSTSB, was that it had applied to the state authority for the alienation of the said land back in 20 February 1998. Immediately after the said application, SKSTSB entered into the said land and planted oil palm trees on about 500 acres. Between 1998 to 2005, SKSTSB spent about RM354,941.59 to manage and sustain the said land. SKSTSB planted oil palm trees and spent about RM76,000 for purchasing oil palm seeds. SKSTSB also obtained monthly renewable permits from Lembaga Minyak Sawit Malaysia (MPOB) to remove, sell, buy and store palm oil fruits since 12 March 2001.

[20] Then sometime in December 2005, SKSTSB discovered that said palm oil plantation worked on by SKSTSB had been leased to Zabaco Enterprise without SKSTSB's knowledge and consent. On 23 December 2005, SKSTSB was shown for the first time a purported "Perjanjian Pajakan" dated 8 October 2005 signed between Zabaco Enterprise and Marsitah binti Daud and a purported authorisation letter signed by SKSTSB Marsitah binti Daud dated 28 September 2005. The managing director of SKSTSB lodged three police reports and issued a notice of demand against Zabaco Enterprise to stop all activities inclusive selling palm oil collected and removed from the said land.

[21] On a follow up on 13 April 2006 to their earlier application for alienation of the said land at the Pejabat Tanah Kluang, SKSTSB was informed that their application on 20 February 1998 was missing. SKSTSB reapplied immediately.

[22] At the same time, the said Pejabat Tanah Kluang opened a tender for palm oil harvesting over the said land. SKSTSB applied. However, the said tender was awarded to the respondent BTSB.

[23] Unhappy with the said decision, SKSTSB appealed to the Office of the Menteri Besar of Johor. SKSTSB was informed that the said permit awarded by Pejabat Tanah Kluang has been cancelled. SKSTSB was also advised by the Pejabat Tanah Kluang that the said land had been put under the jurisdiction of the Pejabat Hutan Johor Daerah Kluang. Upon enquiry at the said Pejabat Hutan Johor Daerah Kluang, it was made known to SKSTSB that BTSB was awarded on 16 December 2006 with the use permit for oil palm harvesting on an area of 966.78 acres inclusive the 500 acres of land planted with oil palm trees by SKSTSB.

[24] On 15 December 2010, *vide* a letter by Jabatan Perhutanan Negeri Johor, SKSTSB was awarded with harvesting rights over PTD 8589 (Hutan Simpan Kluang) Mukim Renggam for an area of 139.68 hectares (345.15 acres). This was accepted by SKSTSB and payments for the various fees has been paid.

Decision

[25] In respect of its objection, BTSB relied on *Capital Insurance Bhd v. Kasim Mohd Ali* [2000] 1 CLJ 269; [2000] 1 MLJ 193 where this court had stated:

> The rules and practice directions made by the court are to be obeyed and not to be broken. We would like to stress here that parties to an appeal must adhere and comply strictly to those rules and directions. Of late, we found that there were numerous instances where parties had not adhered or complied to those rules and directions and we want to make it clear that they do so at their own risk.

[26] If parties are allowed to ignore the rules, it is akin to letting parties to play by their own rules. But lest we be carried away by over enthusiasm with compliance with the rules, it is well to recall that by way of PU(A) 196/2002, the following has been added to the rules:

> In administering any of the Rules herein, the Court or a Judge shall have regard to the justice of the particular case and not only to the technical non-compliance of any of the rules herein.

[27] But again, lest we be carried away by similar over enthusiasm in the other direction, it is equally well to bear in mind what was said in *Duli Yang Amat Mulia Tunku Ibrahim Ismail ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal* [2009] 4 CLJ 329. Although the case did not concern r. 18 of the Rules of the Court of Appeal 1994 but O. 1A of the Rules of the High Court 1980, the principle is similar. The Chief Justice had this to say at para. 50 of the judgment:

> [50] As I had mentioned in court, if O. 1A is sought to be invoked whenever a party fails to comply with any provision of the rules, then the whole of the Rules of the High Court 1980 would be rendered useless. For example, can failure to enter appearance or file defence within the specified period be considered as an irregularity? Of course it cannot be. A party who is late in filing the relevant papers must obtain an order from the court to extend the time, if such extension is required and is permitted by the Rules. Therefore, the answer to question two is in the negative.

[28] It has been made clear, therefore, that the curable non-compliance is not across the board, and does not allow parties to simply ignore the rules. There is a balance between the needs of justice and the need for compliance with the rules. Rule 1A of the Rules of the Court of Appeal 1994 is about how this court exercises its discretion on questions of compliance with the rules. Rule 1A is applied to facilitate applications to remedy non-compliance. Rule 1A cannot be used by a non-complying party who ignored the fact of its non-compliance, does nothing about it, thereby forcing others to accept its act. Such party, therefore, cannot use r. 1A to answer an objection when made based on its non-compliance. Otherwise parties can and will ignore the rules. There must, therefore, be acknowledgement by the non-complying party that there was such non-compliance, and it must put a valid application before the court to exercise judicial discretion to remedy that non-compliance. Then in considering the application to remedy the non-compliance, the court or the judge shall have regard to the justice of the particular case and not only to the technical non-compliance of the rules.

[29] In this case, the objection is that the memorandum of appeals did not raise any specific issue for the deliberation by this court.

[30] Rule 18 of the Rules of the Court of Appeal 1994 requires an appellant to prepare and file a memorandum of appeal with particulars. Rule 18 is particular about particulars. It has precise directions. The memorandum of appeal must set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, and specifying the points of law or fact which are alleged to have been wrongly decided; such grounds to be numbered consecutively.

[31] The rule expresses the principle that an appeal is not intended as a second bite of the cherry for a party who is not happy with the decision of the court appealed from, but an appeal is for the purpose of seeking the intervention of the appellate court to correct an injustice arising from an error of law or principle or a finding or conclusion of fact relied upon by that court.

[32] A holistic understanding of the rules of civil procedure and delivery of justice means also that the statement in a ground of appeal that the court of judge appealed from had erred is not perfunctory phraseology, but carries specific implications. In *Public Finance Bhd v. Harta Pertama Sdn Bhd & Ors* [2002] 4 CLJ 768; [2002] 4 MLJ 599, it was held:

> The other point raised before us by the appellant is that the learned judge ought to have entered judgment against the first respondent as borrower despite any infirmities that the appellant's case might have had against the guarantor respondents.
>
> We invited Mr Manjit Singh, counsel for the first respondent to deal with that argument. He has pointed out to us that this complaint has not been addressed specifically in the memorandum of appeal. We agree. In those circumstances, we consider it inappropriate for us to express any views on the matter. This is particularly so when the point was not put to the learned judge at the conclusion of the case in the fashion it has been done before us.
>
> In our view, any attempt on our part to intervene at this point in the case would constitute a breach of the rules of natural justice, especially when the learned judge has not been given an opportunity to express his views on the matter.

[33] In simple terms, reliable delivery of justice in an adversarial system requires that every cause of action and fact relied upon must be pleaded, so that the other party has the opportunity to check and verify it and if necessary to answer it. If such

opportunity is not given, it is unsafe to take that cause of action or supporting fact into consideration. If after checking and verification of the facts relied upon it emerges that a trial is necessary, evidence relied upon and results of the checking and verification, if put before the court and submitted upon, can be safely considered in coming to a conclusion and making a finding of fact. If not put before the court, it is not there to be considered. Even if put before the court but not submitted upon, one cannot necessarily tell or know whether after the evidence had been heard and tested in court, the party relying upon it or the party challenging it has abandoned or accepted it. Although the law need not be pleaded, only binding law need not be raised in submissions (see eg, *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75). But if the law merely gives a discretion, then it must be submitted upon. If a matter needs to be pleaded and pursued, or requires an exercise of a discretion was not pursued and submitted upon, it cannot be said that the court or judge had erred by not taking it into consideration.

[34] Although the grounds in both appeals encompass the matters raised before the High Court and therefore does not suffer from the infirmity alluded to in the above case, the grounds are so general in nature as to be embarrassing. It is nothing more than saying one is not happy with the decision without saying what is the error of law, principle or finding or conclusion of fact relied upon. It is merely an attempt for a second bite of the cherry. It is similar in its generality to the ground described in *Taylor v. John Summers & Sons Ltd* [1957] 3 1 WLR 1182, CA as:

> Ground 1, in effect, is mere surplusage, which would have been better left out, or perhaps would better have appeared at the end of the grounds of appeal introduced by the words in the premises, or by some language of that sort, showing that it was merely a collecting and sweeping up of that which had gone before.

[35] In *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2010] 1 CLJ 444; [2010] 2 MLJ 41 CA, it was held that the absence of the memorandum of appeal in the national language renders the record of appeal filed by the appellant incurably defective and, consequently, the appellant's appeal should be dismissed for the reason there was no proper record of appeal before the court.

[36] Since there are no grounds to consider, the appeal herein ought to be dismissed.

[37] Having heard and considered submissions on the appeal, we find that at the time the 26 December 2006 approval for issue of use permit was issued to BTSB, SKSTSB had only an application for the land. Its earlier entry, development and operation was solely on the ground it had made an application in 1998, which was subsequently found missing and reapplied in April 2006. Even so, it is clear the application had not been approved when the 30 year use permit over the area including the land said to have been developed and operated by SKSTSB was issued by Perhutanan Johor who at the material time had jurisdiction over the area, to BTSB.

[38] It was submitted by counsel that sometime in December 2005, SKSTSB discovered that the said palm oil plantation run and worked by SKSTSB was leased to Zabaco Enterprise without the company's knowledge and consent. We draw no conclusions as the "Perjanjian Pajakan" with Zabaco Enterprise and Marsitah binti Daud dated 8 October 2005 and an authorisation letter to Marsitah binti Daud dated 28 September 2005 were disputed between SKSTSB and those parties. It does not concern the instant appeal. We are not concerned with the decision of the Perhutanan Johor or Kerajaan Negeri Johor but their decision making process: see Vincent Ng J (as he then was) in *Non-Metallic Mineral Product Manufacturing Union v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [1996] 3 CLJ 614.

[39] The area having been placed under the jurisdiction of Perhutanan Johor and its permit to BTSB having been properly issued, the Pejabat Tanah Kluang no longer had jurisdiction to entertain SKSTSB application. Hence, when SKSTSB was awarded by letter 15 December 2010 with harvesting rights over PTD 8589 (Hutan Simpan Kluang) Mukim Renggam for an area of 139.68 hectares (345.15 acres) and which SKSTSB accepted, it was issued by Perhutanan Johor.

[40] The question is whether Perhutanan Johor and the Kerajaan Negeri Johor could do so by cancelling the use permit issued to BTSB on 26 December 2006.

[41] The State Legal Adviser had submitted that it was not a question of cancellation of a use permit dated 30 November 2007 because although the approval was for 30 years, it was subject to an annual licence. But as the State Legal Adviser conceded, there was nothing in the said permit that it was subject to annual renewal.

[42] We find from the letter dated 25 November 2010 from Perhutanan Johor that the earlier approval was being cancelled. The letter from the Kluang Forestry Office dated 30 December 2010 requested the return of the use permit for cancellation. We observe the approval was not for the harvesting of oil palm alone. The approval contained other terms, in particular, to survey the area, submit a forest management plan and replanting open areas with latex timber clones under an agro forestry plan. Clearly Perhutanan Johor was committed to BTSB for the 30 years awarded by the Lembaga Tawaran Membalak Negeri Johor and the annual renewal of the use permit could be withheld when there is any non-compliance with the terms.

[43] The cancellation of a use permit is itself governed by s. 38 of the National Forestry Act 1984. It was provided it may be suspended or revoked under ss. 25, 26 and 27 in the manner and to the extent as if it were a licence. These sections provide for a show cause notice to issue and for the right to be heard. This brings to mind the words of Raja Azlan Shah FJ in *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] 1 LNS 72; [1977] 2 MLJ 152 FC:

> In my opinion the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is "judicial", "quasi-judicial", or "administrative" or whether or not the enabling statute makes provision for a hearing. But the hearing may take many forms and strict insistence upon an inexorable right to the traditional courtroom procedure can lead to a virtual administrative breakdown.

[44] We do not think BTSB could send a representative before the Majlis Mesyuarat Kerajaan Johor, but it should have been given an opportunity, given that the approval of 26 December 2006 is not solely for harvesting oil palm, why the area approved should not be reduced.

A **[45]** We dismiss the argument that the use permit for the harvest of oil palm is outside of s. 34 of the National Forestry Act 1984. If it applies to BTSB, it is equally applicable to SKSTSB.

[46] For all of the foregoing reasons, we find the High Court did not err. We dismissed the appeal with costs.

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